CANCELLED

Single Bench

(3)

C.F(10

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

W.P. NO. 493 /2005

PETITIONER : Abhisek Singh
Aged about 25 years
S/o. Purshottam Singh
R/o. Vill. Akaltara, P.S.
Akaltara, Tahsil and Distt.
Janjgir-Champa (C.G.)

P.R. No. 532/05
Presented by Shri Amit Pandey
dated 10-02-05

VERSUS

RESPONDENT : Bhuwan Lal, aged 35 years
S/o. Shri Kukhram Sidar,
Caste-Gond, R/o. Village
Parsahi (Nala),
Upper Division Clerk,
Office Education Officer
Akaltara, Tahsil and Distt.
Janjgir-Champa (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF

CONSTITUTION OF INDIA

XI-HC-22

(27)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ....WP 793/05.... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

18.3.2005

Shri Anil Kumar Pandey, counsel for the petitioner.

As per the affidavit filed by Prashen Singh that he went to serve the notice on Shri Ashok Sharma, counsel for the respondent appearing before the court below but after reading the notice he refused to accept the notice. Accordingly, service is complete and none present on behalf of the respondent.

The petitioner has preferred this writ petition questioning the legality and propriety of order dated 2.2.205 passed by learned Additional District Judge, Janjgir in Civil Suit No.7-B/2003 whereby learned Additional District Judge rejected the application filed by the petitioner herein for amendment in the plaint.

Brief facts leading to filing of this petition are that the petitioner herein filed a civil suit against the respondent herein for recovery of Rs.1,03,180/-. In that suit written statement has been filed on behalf of the respondent herein and after framing of the issues evidence of the plaintiff/petitioner herein has been closed and now the matter is fixed for defendant's evidence. In the meantime, the petitioner herein moved an application under Order 6 Rule 17 of CPC for amendment of the plaint on the ground that some Adivasi Samiti was constituted and in the meeting of that Samiti the petitioner herein was called and after discussion it was decided to reduce the rate of interest from 18% to 3% and to pay the outstanding amount in installments and in token thereof that Samiti wrote a letter to the petitioner herein which bears the signature of defendant also. However, that letter has been received by the father of the petitioner herein therefore, same was not within

(पीछे देखिये)

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तारीख

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the knowledge of the petitioner and now that letter has come into his knowledge that is why he wants to amend the plaint by incorporating the paragraph regarding letter in question whereby the respondent made admission about the loan and payment.

The trial court after hearing the parties rejected the application of the petitioner herein on the ground that the evidence of the petitioner/plaintiff has already been closed and thereafter, this application has been filed. Further that in the plaint the petitioner herein has pleaded that 18% p.a. interest was agreed between the parties, whereas by the proposed amendment the petitioner herein wants to introduce that he is entitled for interest at the rate of 3% per month that goes to 36% per year, therefore, the proposed amendment is not bonafide and this application has been filed only to delay the trial. Trial court further held that said Mustafa Khan has also not been made party to the suit.

Learned counsel for the petitioner at the outset argued that the only purpose of the petitioner for seeking this amendment is to ensure that the petitioner is allowed to cross-examine the defendant on the question of document and if this is permissible then he will not press the amendment application and this writ petition.

In my opinion, the answer to the prayer made by learned counsel for the petitioner is in Section 145 of the Evidence Act and sub-rule (3) of Order 13 of CPC where it has been mentioned that for the purpose of cross-examining any witness of other party any document can be used and counsel for the petitioner herein wants to use the document in question dated 1.4.2001 for cross-examining

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

defendant Bhuwan Lal about the execution of this document and his signature on the document.

As mentioned above for the purpose of cross-examining, counsel for the petitioner can use this document and for this purpose the petitioner can move to trial court.

With the observation aforesaid, the petition stands disposed of. Consequently, M.W.P. No.407/2005 also stands disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge